

## **Nebraska Commission on Law Enforcement and Criminal Justice October 28, 2005**

The Nebraska Commission on Law Enforcement and Criminal Justice met Friday, October 28, 2005, at 9:30 a.m., in Lower Level Conference Room A of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. Legal notice of the meeting was published October 17, 2005, in the Lincoln Journal Star.

### **CALL TO ORDER**

The meeting was called to order at 9:35 a.m. by Chairman Jon Bruning. The following members were **in attendance**: Jon Bruning, Scott Arnold arrived at 9:40 a.m., Bill Brueggemann, Scot Ford, Robert Houston, Susan Jacobs, Gary Lacey, Paul Leseberg, Peter Pirsch, James Riskowski arrived at 10:45 a.m., George Watson, and William White. **Members excused**: Charles Brewster, Kathy Moore, Don Overman, Bryan Tuma, and Thomas Warren. **Staff present**: Bruce Ayers, Nancy Steeves, Jennifer Kirkpatrick, Rick Barnica, Stephanie Vensky and Barbara McCreight.

### **APPROVAL OF MINUTES -**

Bruning announced that revised minutes of the Crime Commission meeting of July 29<sup>th</sup> were distributed with additions underlined.

#### ***Motion***

***A motion was made by Ford and seconded by Watson to approve the revised minutes of the Crime Commission meeting of July 29, 2005; the minutes of the Police Standards Advisory Council meetings of July 20, and August 17; and the minutes of the Nebraska Coalition for Juvenile Justice meeting of September 16, 2005. The minutes passed unanimously by acclamation.***

The minutes of the Community Corrections Council meeting of August 19<sup>th</sup> and the Jail Standards Board meeting of July 15, 2005 were provided for the members' review.

## EXECUTIVE DIRECTOR'S REPORT

Mike Behm presented his executive director's report noting the following:

- Steve Lamken retired as director at the NE Law Enforcement Training Center. Lamken is now chief of police for the Grand Island Police Department.
- Rick Barnica is serving as Interim Director at the Training Center pending the approval by PSAC. A job description is being developed by PSAC which will be used in seeking a new director.
- Deb Hunter was hired as a secretary for Grants Division
- Monica Miles Steffens had a baby girl September 29<sup>th</sup> named Ella Josephine. They are both doing well.
- Eli McBride is assisting with Steffens job duties in her absence.
- Don Overman is not present today because he will be attending the dedication and ribbon cutting for the Donald E. Overman Terminal in Scottsbluff. The Western NE Regional Airport has been a dream and pet project of Don's for the last 19 years. Copies of the newspaper articles regarding the dedication were distributed.
- A summary of the Crime Commission's appropriations was distributed.
- A listing of meeting dates for 2006 was distributed.

## OLD BUSINESS

### Annual Certification of Omaha Police Academy

George Watson reviewed the recommendation of the Police Standards Advisory Council on the annual certification of the Omaha Police Academy.

#### *Motion*

*A motion was made by Leseberg and seconded by White to approve the annual certification of the Omaha Police Academy. Voting in favor of the motion: Brueggemann, Ford, Houston, Jacobs, Lacey, Leseberg, Pirsch, Watson and White. Motion carried unanimously.*

## NEW BUSINESS -

### Law Enforcement Training Center

#### 1. Instructor Certification/Recertification

The Commission next considered 2 requests for general instructor certification, 5 requests for professional instructor certifications, and 2 requests for professional instructor recertifications. PSAC's recommendations were reported by George Watson.

### *Motion*

*A motion was made by Leseberg and seconded by White to grant instructor certifications as per PSAC's recommendations as follows: General Instructor Certification to Steven Gill, Nebraska State Patrol; and Jane E. Weiler, Mary Lanning Memorial Hospital; Professional Instructor Certification to Monica Bartling, Nebraska State Patrol; James E. Fitzgerald, Nebraska State Fire Marshal; Try Hughes, Grand island Fire Department; Joseph L. Rogers, Nebraska State Patrol; and David A. Sankey, Nebraska State Patrol; Professional Instructor Recertification to Mark Williams, Nebraska State Patrol and Clark Wittwer, Lincoln Police Department. Voting in favor of the motion: Arnold, Brueggemann, Ford, Houston, Jacobs, Lacey, Leseberg, Pirsch, Watson, and White. Motion carried unanimously.*

Scot Arnold arrived at the meeting at 9:40 a.m.

## **2. Repeal of Operating Instruction 50-37, Certification of Instructors for Jail Officer Training**

George Watson presented the recommendation of the Police Standards Advisory Council (PSAC) to repeal Operating Instruction 50-37, Certification of Instructors for Jail Officer Training. Watson stated PSAC does not have statutory authority to certify instructors for jail officer training. A meeting was held with Denny Macomber in which it was decided that the Jail Standards Board will certify their instructors for jail management. The training will still be offered at the Training Center and an instructor will still be available through the Center. However, certification will be granted through the Jail Standards Board. It was noted that the jail officer training curriculum is not governed by an operating instruction but is also approved by the Jail Standards Board.

Members questioned whether the current operating instruction could be modified to include certifying the instructors of jail training. It was noted that PSAC certifies instructors for canine officer training without statutory authority.

Members questioned if there was a system in place to certify jail instructors if the current operating instruction was repealed. It was determined that there was no current system in place. It was suggested that Denny Macomber develop a plan to address concerns expressed by the Jail Standards Board.

### *Motion*

*A motion was made by White and seconded by Ford to carry over action on the repeal of Operating Instruction 50-37, Certification of Instructors for Jail Officer Training until the next meeting in January. Voting in favor of the motion: Arnold, Brueggemann, Ford, Houston, Jacobs, Lacey, Leseberg, Pirsch, Watson, and White. Motion carried unanimously.*

### **3. Affirm Executive Director's Decision Not to Pursue Revocation Certification of Douglas A. McCarty, Kearney, Nebraska - #LR-038-05**

Chairman Bruning stated the next item on the agenda was to affirm the Executive Director's decision not to pursue revocation of Douglas A. McCarty's law enforcement certification - case #LR-038-05.

Bruning stated Neb.Rev.Stat. §84-1410 provides that any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting.

Bruning reported that Mr. McCarty did not requested a public meeting. The Commission considered going into a closed session for the purpose of discussing the possible revocation of Douglas A. McCarty's law enforcement certification.

Bruning stated that members of the public would have an opportunity to speak in open session.

Bruning reviewed the rules for holding a closed session noting the vote to hold a closed session must be taken in open session. The reason for the closed session, who is to remain in the room, and time of the closed hearing must be part of the motion and recorded in the minutes. A closed session restricts its consideration of matters during the closed portion to only those purposes set forth in the minutes as the reason for the closed session. The meeting must be reconvened in open session before any formal action may be taken. The closed session is restricted only to consideration of matters set forth in the motion.

#### ***Motion***

***A motion was made by White and seconded by Brueggemann for the prevention of needless injury to a person's reputation to have the Commission enter into a closed session at 9:55 a.m. for a period 10 minutes for the purpose of discussing the possible revocation of Douglas A. McCarty's law enforcement certification #LR-038-05. The Commission members and Executive Director were to remain in the room. Voting in favor of the motion: Arnold, Brueggemann, Ford, Houston, Lacey, Leseberg, Pirsch, Watson and White. Abstaining: Jacobs. Motion carried.***

Bruning asked that only Commission members and the Executive Director remain in the room for the closed hearing which began at 9:55 a.m.

*Motion*

*A motion was made by Houston and seconded by Arnold to return to open session at 10:05 a.m. Motion passed unanimously by acclamation.*

The public session of the Crime Commission resumed at 10:05 a.m.

*Motion*

*A motion was made by Brueggemann and seconded by White to affirm the Executive Director's decision to not pursue the revocation of Douglas A. McCarty's law enforcement certification #LR-038-05.*

The public was invited to speak to the motion. Those speaking were asked to limit their presentations to approximately 5 minutes.

George Watson stated for the record that he would recuse himself from further consideration of this matter since a hearing may eventually come before the Police Standards Advisory Council. He will abstain from voting.

**Public Testimony of Terri Sesna, Kearney Police Department Officer**

SESNA: My name is Theresa Sesna, I'm a police officer with the Kearney Police Department and I will keep it brief cause I know you guys have a pretty heavy agenda and also, Tami Sculley, who is the mother of the little boy who was the victim of this crime.

Just a brief history. I originally reported this crime to the Attorney General's Office as it was reported to me by a HHS worker as part of my mandatory reporting by law enforcement. When it was reported to me that this crime, the statute of limitations had run out on this particular crime. It was told to me by the Attorney General's Office that it would be forwarded to the Crime Commission for review of Douglas McCarty's certification, which was something that I was not aware that could be done. But actually, I was quite happy that something else could be done since the statute of limitations had run out.

When I was advised of that, I did get in contact with Mr. Behm and he did tell me that he was going to make a recommendation that the certification revocation not be pursued because of a lack of evidence. And that's why I wanted to come speak today because I don't agree with that finding because there is quite a bit of evidence that is still out there, that has not been reviewed yet. That is what I wanted to bring to the board's attention.

The evidence that I'm speaking of quite frankly is there are Polaroid photos and medical records that are available at Richard Young Hospital that were taken right after the offense and have not been reviewed yet by the Attorney General's Office and by the board. There are witnesses that have not been interviewed, specifically, Ms. Sculley, the mother who was present during some of the assault and the victim himself who is quite capable of giving an account of what happened. There is information that the HHS worker Lynn Cooper can provide. She was present during the time and there is additional information that can be provided by an officer who was there during the time, Jay Schanau.

There is also digital photographs available in the HHS file which is currently in the vault here in Lincoln that could be made available which are actually very good photographs of the injuries sustained from the beating that the boy took by Officer McCarty.

There is also information available that the boy did not have to be placed in metal handcuffs. There were soft handcuffs, soft restraints, available 5 blocks away at the Buffalo County Detention Center.

Again there is a wealth of information, a wealth of evidence that has not been reviewed yet. So I disagree with the findings that there is insufficient evidence to pursue this case any further.

Another thing that I have a problem with, is that when I spoke with Mr. Behm after I received his letter that they were not going to pursue this any more, he felt it should not be pursued any more, is a couple of statements that he made to me. Those statements were that Steve Lamken, who of course we all know used to be the chief of police in Kearney and does have a friendship with our current chief, Dan Lynch, had difficulty sending out that letter. That letter to Chief Lynch and Doug McCarty that his license was being reviewed. And also that he was content that Chief Lynch conducted an investigation and that he exonerated Doug McCarty.

Now I have a problem with that because to me that indicates there is some kind of a bias, that he is content with that investigation and that exoneration. I did express that to Mr. Behm. My comments to him at that point were "that's what they do", I've never met a guilty person that admits guilt and that would admit liability also. If that's the case, I would like to offer to the board that my brother is Chuck Headley and if you speak to him, he'll tell you that I'm a credible person. That I have been investigating child abuse and neglect cases since 1992, that's my

speciality. That I know what I'm talking about, that there is evidence out there and that this should be looked at a lot heavier and a lot longer and that there is something out there that needs to be looked at. And that is what I'm asking the board to do.

That evidence is there and just asking you to finish what was started.

LACEY: Did anybody look at this situation outside the Kearney Police Department?

SESNA: No sir.

LACEY: So the State Patrol nor no other law enforcement agency was called in.

SESNA: No sir, and I believe when I contacted the Attorney Generals Office, the reason given was that the statute of limitations had run out.

LACEY: I know, why did you wait so long before reporting it to the Attorney Generals Office.

SESNA: The HHS worker that contacted me was actually, her words to me, that would be Lynn Cooper, was that when she was contacted, she was intimidated by her boss, which was Brenda Roetman, to keep her mouth shut or she would lose her job. And also Tami Sculley, whose going to speak to you today, was also intimidated by the police department and threatened by the police department not to pursue the matter.

LACEY: Has the child's mother consulted anyone considering filing a civil action.

SESNA: Yes, and she will speak to you on that. She is here to answer all those questions firsthand.

HOUSTON: What were the actions by this officer that you indicate an assault and how were this officer's actions different than the restraining of the 12 year old than the other officers.

SESNA: This officer who was asked repeatedly to leave the room refused to leave the room. And this boy, we are talking about a little boy who is 57 pounds, was handcuffed behind his back with metal handcuffs, he was handcuffed at his feet, and a third set of handcuffs were used to hog tie him cuffing the hands to the feet. Lynn Cooper reports at one point before his hands were cuffed to his feet, he was slammed up against the wall, the photographs will show he's got scratches on his face from the



carpeted wall. He was knee struck in the leg, he's got huge bruises on his thigh from the knee striking. Lynn Cooper reported to me that at one point while he was hog tied with the 3 sets of cuffs, he lifted the little boy up in the air over his head and slammed him down onto the ground. He was slammed on to a love seat, his head hit the arm of the chair where his head snapped back and caused a problem with his breathing, where he was spitting up and choking. Both Lynn Cooper and Tami Sculley will be able to tell you first hand that when the sergeant, the captain,...he was a lieutenant, I'm sorry, Lieutenant Kirkwood came in and finally removed Doug McCarty from the room, they over heard him telling Doug McCarty what the hell do you think you're doing? You better fix this.

There's serious evidence of a cover up and abuse of this child. This can be witnessed because the paramedics eventually were called. The cuffs were taken off. He was put into soft cuffs. And the paramedics can even testify who attended him at the scene, of the injuries of the boy and like I said they were all documented up at Richard Young Hospital when he was transported up there.

FORD At what point did you become involved in this?

SESNA Um....actually, I knew nothing about it until I was contacted some time later by the HHS worker who saw me at a business place, who spoke to me, she was tearful, she knew I was involved in child abuse and neglects. She told me she was still having nightmares about it. Um..

FORD A week later, a month later?

SESNA Actually, months later.

FORD Months later?

SESNA Enough for the 18 months to be passed and the statute of limitations to be passed on it. But I was hoping that the Attorney General's Office would see it as a felony which we would still be within the statute of limitations for prosecution. But they saw it as a misdemeanor and it was ...like I said the statute of limitations had passed by then.

Like I said, that's the only thing I was asking, because there is photographic documentation and a doctor's reports and other witnesses that could support further investigation by the Crime Commission. And that is all I'm asking, is that they finish what they started and not let this pass.

WHITE When the internal investigation was done by the police, was there any



outside agency or any individual called out from outside the police department to make the investigation.

SESNA No sir.

WHITE Strictly all Kearney Police people?

SESNA Yes sir. I do have the letter that the chief did send to Tami Sculley. I mean, it was a letter of excuses to her. And she can speak more on that, what she was told, so you can hear it first hand and not by me.

No external investigation, no external people brought in. Nothing looked at from the outside.

BRUEGGEMANN: Do you know did they have the recording going inside the interview room?

SESNA The capabilities were there. And it was being watched from the monitoring room by Captain Don Dreyer, Lt. Kirkwood.

BRUEGGEMANN: The second question was is an officer, the one we're talking about here, is he trained on soft restraints or does he have that available for him.

SESNA They were available - 5 blocks away at the Buffalo County Detention Center.

BRUEGGEMANN: But normally, it is the handcuffs that what readily available if they have.

SESNA: Yes, and at one point, in Lynn Cooper's report, like I said, I have these reports available, um... Lynn Cooper's report, she even mentions in her report where he put the handcuffs on him, they were too big, he slipped out of them. He left the room to go get a smaller set of cuffs so he could put those smaller cuffs on him after he drug him out from behind a couch, when the boy ran and hid behind a couch to hide from him. Drug him out from behind the couch by his ankles. Put the smaller cuffs on him and then cuffed him by his ankles. Then used a third set of cuffs to cuff those 2 sets of cuffs behind his back - hog tying him.

BRUNING: Any further questions? Thank you

SESNA: Thank you very much for the time, I appreciate it.

BRUNING: Ma'am, please. For the record you are....

### **Public Testimony of Tami Sculley**

SCULLEY: Please all bear with me, I'm not a very good public speaker here, plus I'm the mother of the victim. And to clarify things, he was 11 years old, not 12. The exact statement made by Lt. Kirkwood to Douglas McCarty was "What the hell were you doing and where was his mother?"

I could not hear the response from Douglas McCarty. He said you could've killed the boy, you better fix this.

When I left, I was a witness to the entire beating, all but 5 minutes, which I left the room to use my cell phone to call my son's counselor to get him down there.

The HHS worker stayed in the room during the time I had left the room to use the phone. But I was informed by another officer there, that I was not allowed to use my phone to call his counselor to get help down there. Because what was going on was wrong, and we needed more people there to help us. She took my phone away from me and told me I could not call his counselor. That's when I walked back down the hall to reenter the room and before I came around the corner, McCarty was in the hallway with Lt. Kirkwood. That's where I listened to the conversation they had. After he said, "You could have killed him, you better fix this", I walked around the corner, went to open the door like this... was pushed out of the way by Lt. Kirkwood who then entered the room and shut the door in my face. I stood right by the door for approximately 2 minutes, Kirkwood came out of the room and said "You may go in now." I don't know what went on while I was gone.

I think that Officer Sesna gave a pretty good account of the angle that she is working on this. I'm his mother. And I stood in a room and watched Officer Douglas McCarty terrorize and brutalize my son. There has been many, many, many pieces of evidence that nobody 's bothered to even look at.

I pursued the channels I was to pursue, starting first with a complaint to the Kearney Police Department. Once I received the letter that Officer McCarty was exonerated, I then contacted the Kearney Police Department, Dreyer to be exact again, and talked with him. I received a phone call an hour after that one, telling me I better shut up and leave this alone. I was hung up on. I received 2 more threatening phone calls.

LACEY: From whom?

SCULLEY: We don't know... 2 more threatening phone calls of the same nature. You better keep your mouth shut and leave this alone or else. My front windows were shot out of my house. This was all during right at this time

when I was in contact with the Kearney Police Department trying to get this... trying to get something resolved or have somebody tell me, what channel do I take next.

If I beat my child, this is what exactly.....

BRUNING: Can I stop you for a second? So you got 3 phone calls at your house. Did you ever try to get phone company records? Do you have them?

SCULLEY: Yeah, I couldn't get them. I couldn't get those, I couldn't get copies of any of the reports.

BRUNING: Your front windows were shot out?

SCULLEY: With like a BB gun or pellet gun, I have an entry way on my house that has windows across the front of it and on each side of it. My front windows, they were pelleted. I do have, not with me right here but at home, the receipts for fixing all of that and what they came out and said it looked like what had been done. I had a glass company in Kearney fix them.

BRUNING: Was there any of that going on in town at the time with some kids?

SCULLEY: Not that I'm aware of, no. No. But that part not so much as the threatening phone calls, that I had better keep my mouth shut. Also, Lynn Cooper, Child Safety and Protection Worker with HHS, was threatened with her job if she came forward and spoke about this.

BRUNING: Did she file a grievance with her ...?

SCULLEY: She was in the middle of a high-risk pregnancy and was receiving insurance through HHS. She has now, however, said that she will come forth and speak. She asked for today off, but when they found out where she was going, they first told her she could have it off, when they found out where she was going, they reneged on that and told her she couldn't have the day off to come here and speak today.

My biggest point is that child abuse is against the law. Everybody knows that. And if I had done to my son what Douglas McCarty did to my son, I would be in jail, for a long time. Nothing was done to him.

I do have the files on everything. I have tape recordings of everything that I'm taking to the ACLU. I've already spoke with them, when we leave the meeting here today. Because it doesn't stop here, its got to go on. He can't do this. I have a copy of an article. . .

BRUNING: How big was your son?

SCULLEY: He weighed 59 pounds.

He has mental problems. He's been in and out of different places. Since he was 3 years old, I've been dealing with him and I'm not as big as Douglas A. McCarty. There's been many occasions I've had to sit on the floor, with my legs around him, and hold him while he fought, and spit, and screamed, for 45 minutes until he calmed down. I never beat my child though. I never had to.

Keith Dreyer has a child, he spoke to me openly about it when I was there giving him my report. He has a child a lot like Eli, although his child has compounded things wrong with him. He tried to coherence me into saying "sometimes you know, you need to use a little more physical force, don't you with children like this?" I said I've never found that to be true. Never. And my child can be pretty aggressive, but I've never used any physical force with him other than sitting down and holding him until he was calm enough to reason with. And this is an officer who takes an oath to protect and serve? And he didn't protect or serve.

I have an article, I even hesitate to bring it up, published in the GI Independent. Do you recognize it? By you, Mr. Bruning, that says the Attorney General's Office is prosecuting more public officials, that officers are not above the law...

BRUNING: But that doesn't have anything to do with it. I understand, but make sure you stick with.... the thing you can help us with, is the facts of your sons case. You can talk about what I did in Timbuktu yesterday and its not relevant.

SCULLEY: But we give the facts to each channel that we go through, it's never investigated.

BRUNING: I understand that you feel that way, but the only thing we can do is react to the facts that you present to us. So if you have additional facts, we're all ears. The general argument that this isn't the place for that, it's a place for you to help us understand what we currently don't understand.

SCULLEY: Do you want, I have the report here that the HHS worker who was unable to attend this meeting, filed. I have a copy of that report. I have an audiotape of all the reports made by the officers that were in attendance at that. I have the letters that were sent about him being exonerated back to me, the excuses that I was given.

BRUNING: Well, let me stop you here and ask the Commission if they have questions.

LACEY: Did Mike (Behm) have the benefit of all these recordings and...

BEHM: I don't, I had copies of offense reports, copy of the report you were talking about from the caseworker, the internal affairs investigation recommendation from the Captain to the Chief, the copy of a letter from the Chief to yourself, I believe there are some other letters I may have from different people.

SESNA The Attorney Generals Office was provided with all that she was ....

BEHM: Right, everything that you sent to the Attorney General's Office I have copies of... but no audio, I did have copies

SESNA: I provided the Attorney General's Office with the audio tape she is speaking of.

LACEY: I would like to hear from the social service worker that you are making reference to.

BRUEGGEMANN: Is it not PSAC's power to investigate recommendations to us or it sounds like the evidence will be coming to us and we'll just turn it over to PSAC for investigation.

BRUNING: I think there are 2 ways this could go. The Executive Director can make a decision not to pursue or he can forward it to PSAC. So the question today, and I'll just, so I'm not trying to set anybody up here, I did not see this, there's a lot of people at the Attorney General's Office. I know I'm the Attorney General but I don't see every single case that comes to our office. I know Steve and I trust him, and he's a good man and I don't think he would throw something away that he believed there was an issue. But I just going to tell the Commission how I feel today.

I would like to see this evidence, I'm not prepared for my one vote to act on the recommendation of our Executive Director, who I trust and believe is a good man. I'm not prepared to act on it today. I'd like to see this, I think perhaps this is one we ought to send to PSAC. Because the central piece of evidence in my mind is that the kid was 59 pounds. Maybe this was a little much. Does that mean that the guy ends up off the force. I don't know. The standard is a moving target for when we take an officer's certification. There's no clear, here it is, and here its not. Unless they're a

felon. But in this range here where they maybe beat up a kid and maybe not , it's not clear what the certification standard is.

SESNA: Certainly, I'm not asking for that..I'm just asking that you look at all the evidence before the decision is made.

BRUNING: And I would agree with that, I would like to see it looked at. I can't tell you why my office didn't. I don't know every detail of every case that comes before us, but I do trust the folks at PSAC, I trust Mike, it sounds like there is new evidence, my point is to the group, I'd like to have the evidence reviewed. I'm not prepared to act. Now maybe the Commission is prepared to act today. We have a motion before us and you're welcome to act as you see fit.

LACEY: I'd like to know, can I ask her a question?

BRUNING: Of course.

LACEY: Your son went to the hospital to be checked out.

SCULLEY: He was taken to Richard Young Hospital in Kearney.

LACEY: And that's a regular medical hospital?

SCULLEY: That's a mental health hospital. He was taken there...we don't have any kind of emergency shelter in Kearney for youth, at that time we didn't.

LACEY: What I need to know is did he have any physical injuries, other than, and I'm not making this to say it doesn't amount to anything, did he have any injuries that you know of that were permanent or ...

SCULLEY: The only injury that he has that is permanent is a mental injury now that he absolutely trusts no officers. And I pursued that.. (Not audible). He had no injuries, physical injuries to his body that are keeping him from functioning.

SESNA: He was making suicidal comments by the end of this incident that caused him to have to be taken to Richard Young Hospital which is a mental health facility.

LESEBERG: I have a couple of questions. You said you've had trouble with him since he was 3 years old and that you did have to restrain him by holding him, hugging him whatever, for up to 45 minutes. Number one, did he have any other instances like this at school or any other place other than your home?

SCULLEY: He had several incidents, several. There was never an incident where anybody used that kind of aggression, nobody had to ever use that type of aggression to control him. I believe in my heart and I'm just a mom and I don't know for sure, but I believe the law states you can't do that. So the principals didn't, the teachers didn't, the counselors didn't, they knew what they could do and they did what they could do.

SESNA: There was a safety plan in place ....

SCULLEY: Every since Eli has, third grade, fourth grade in that area, we have always had IEP's (Individual Education Plans), we have team meetings, we have a team set up every year at school. We have a safety plan in place every year.

LESEBERG: Is he under any sort of medication as far as this program goes?

SCULLEY: Yes, he is. He's under medication and now he is in Columbus at Omni because even since this incidence, I haven't stopped getting help for my son. I'm not going to stop getting help. It's not going to stop me. He was on, I can't tell you for sure until I go back through the records and get them to the Attorney General's Office, but what medications he was on at that time, I'm not sure.

The safety plan that was in order the day this incident took place, was initiated by Officer Douglas McCarty and Officer Kolar. What was her first name, Jen Kolar. They had been out to the school prior to this incident and they sat with myself and the Principal Kipp Petersen at Horizon Middle School and made the safety plan. The safety plan that was put into action for Eli that year was that if he got into trouble he would be taken to the principal's office, if he didn't calm down there, mom would be called. If mom came and Eli would not leave with her, mom was to leave the school, KPD would be called and they would take Eli from there back to the home. That's the safety plan that Officer McCarty and Officer Kolar put into place. Signed and everything, I have copies of that too.

On the day of the incident, I was called to the school. Eli was really angry, he wasn't going anywhere with me. Principal Kipp Petersen told me you need to leave, I've called the Kearney Police Department. I said Ok.

I reluctantly left, but I went directly home so that they could bring Eli to me. I received a phone call from Officer Kolar about 20 minutes later, "What the hell do you think you're doing, we're not your babysitter. You can't just leave your kid at school for us to take care of." And I said, "Who am I speaking with"? Jen Kolar. And I said, "Well Officer Kohler, you put the safety plan into action. If you think it wasn't difficult to leave my son there, you're wrong. That's what the safety plan states, that's what I did. I



reluctantly left that school and went home and waited for your to return him.” She said, “I’m not bringing him home, you’re coming down to the police station. And you better call his caseworker while you’re at it.”

I said, “That’s fine, I will do that.” I called, she wasn’t in but when I arrived at the police department she was in the waiting area of the Kearney Police Department waiting for me, where we were both taken back to the soft interview room where Eli was. Very calm at this point, he was just sitting in the corner thumbing through a phone book until Officer McCarty came in. Officer McCarty made several statements to him like “What are you going to do now you little punk?” “Oh, you think you’re tougher than me?” Those kinds of things, he just kept agitating him like and kept agitating him. The story goes on, we’ll get all this to you, I don’t....

BRUNING: Are there other questions?

JACOBS: With respect to the HHS worker, has she prepared a report in any form that has been ... and was that directed to the Attorney General’s Office?

SCULLEY: Did you send her a report?

SESNA: Yes, he has a copy of that too?

JACOBS: During the incident, when you were not in the room as you described as a couple of minutes, was she in the room at that time?

SCULLEY: Yes, she was.

ARNOLD: I have a question and that is in regard to Terri made a statement that Officer McCarty was asked to leave the room several times.

BRUNING: Terri, can you stand up here so you are on the record too.

ARNOLD: I think the mother is going to have to answer this because.... he was asked to leave, but who asked him to leave?

SESNA: Actually Lt. Kirkwood came in and had him leave the room. But actually, throughout the conversation, or throughout the whole incident, Eli was asking (him) to get out. “Just ask him to leave, just ask him to leave. I’ll calm down if you ask him to leave.”

SCULLEY: “Tell him to quit touching me. To keep his hands off of me.”

SESNA: McCarty, when Eli was sitting on the couch, McCarty would sit on a table that was right across from him, deliberately agitating him. And uh...at one

point Lt. Kirkwood did come in and have him get out of there. At which point Officer Schanau came in and took over. McCarty said I was the first officer here, so I think I'm the one that should be in here in the room with him.

When McCarty was finally removed from the scene, Eli calmed right down. He was out of the cuffs and cooperated fully with the EMS staff. Eli was fine once McCarty was taken out of the situation.

HOUSTON: Just a point of information, I don't know how this pertains here, I work in corrections and we do that, usually when we have someone whose basically out of control, they focus that towards one individual. The other officers are trained to have that person leave so they can focus....

SESNA: The reports, when you read all the reports, not only from Kirkwood and even McCarty in his own report, kind of points his finger at himself. Saying, he tells me to leave but since I was the first officer in here from the beginning, I wasn't leaving. From his reports, from Schanau's reports, from Lynn Cooper's reports, .....

SCULLEY: He was so angry the veins were bulging in his neck and he was red in the face.

SESNA: He says Eli calls him a name..they're very descriptive of how it really makes McCarty mad and how McCarty goes after him. In everybody's reports, all Eli wanted was for McCarty to get out of there and get away from him. Quit agitating him.

SCULLEY: That's all Eli wanted.

SESNA: That's all Eli wanted and McCarty refused to leave. McCarty even points the finger at his own self when he puts that in his own report.

BRUNING: Peter, do you have a question?

PIRSCH: Just a question as far as you mentioned that this was in the soft room, is that how you called it.

SESNA: It's a soft interview room, its got carpeted floors, its where we usually do interviews with victims.

SCULLEY: At that time it had a love seat in it and he was placed with his neck over

the arm of the love seat.

SESNA: When he was thrown down on the love seat from what Lynn Cooper described, his head hit the arm of the love seat and it snapped back.

PIRSCH: Ok, my question is - so that's where all of the actions allegedly took place?

SESNA: Yes, that's the seat that she described in her report that he crawled behind to try to get away and was drug out from behind.

PIRSCH: Ok, and it was being monitored during the whole occurrence of the alleged assault.

SESNA: It does have video capabilities.

PIRSCH: Ok, but Captain Dreyer and you said Lt. Kirkwood then were not in the room but were monitoring it in a different room, is that correct, through a video?

SESNA: According to Schanau's report, yes, because Dreyer grabbed Schanau because Schanau describes in his report how he hears thumping on the walls and he kind of walks by and says should I get in there? And Dreyer says 'Yeah, you better get in there because he sees them in the hallway outside the room.'

PIRSCH: OK, so those 2 were outside the room. But possibly at various times monitoring, inside the room was where Officer Shanau is, is that right, and also obviously McCarty and Lynn Cooper the public safety worker. Was there anyone else in there? Is that...

SCULLEY: I was in there for most of it, and Jen Kolar was in there in the very beginning but then she left.

PIRSCH: Who is Jen Kolar?

SESNA: Officer

PIRSCH: Is that the entire cast then?

SESNA/SCULLEY: Yes

SESNA: And there's reports from Officer Jen Kolar, Lt. Kirkwood, Jay Shanau, Doug McCarty and all those reports were provided to the Attorney General's Office along with Lynn Cooper's.

BRUNING: Thank you very much ladies.

BRUEGGEMANN: I have a motion on the floor. I feel that with this new information and information that we don't have, we're obligated to uphold the director's decision. However, I feel that they can resubmit through the proper channels. But I feel based on my motion, and what we have to act on it, that I'd like to say again that I made a motion I believe that we are obligated to uphold that.

BRUNING: Let me point out, I think that what the sheriff is saying here, there is a whole bunch of evidence that our office looks at for criminal charges...., we don't decertify officers in the Attorney General's Office. We can either file criminal charges or not. Just like a county attorney like Gary Lacey. We could file it or not. So you present it to us after the 18 months, we can't file charges unless we believe it's a felony. So you understand that.

Then it comes here. Now, you have new evidence that has not been presented to PSAC. If you want to submit that, you're welcome to submit that. We have a motion on the floor to affirm the executive director's decision. Does that mean it's the decision of this Commission for all time? Not necessarily, if you have additional evidence, you want to submit that to the executive director to PSAC.

SESNA: But the evidence is not available to us. It is in the vaults...

JACOBS: We have to continue to discuss this for a moment I think. Frankly, I do not agree that there is not sufficient evidence to support further investigation. I think it sounds like there is sufficient evidence to support further investigation. I think that further investigation should be done and I don't know that it is the responsibility of these parties to pursue that investigation. It has been brought to us, to you, at this point. And I think that you can order further investigations. Frankly, I think the further investigation probably should be done by the State Patrol. I think there is a question, I don't know what the answer is, I don't know what the felony is then. But it seems to me, I don't know that it matters, I think you can pursue certification without felonious conduct and without a misdemeanor.

I feel strongly that this needs to go further with an investigation and I will not support the recommendation.

Riskowski arrived at the meeting at 10:45 a.m.

WATSON: Just as a point of procedure, Rick (Barnica) may have the procedure down more than I do. The complaints have to be filed with the director of the Crime Commission, that's the way the regulations are. Then from that point on a recommendation goes out to the director of the Law Enforcement Training Center. Ahh, which currently would be Rick. And then if it goes out to them with the recommendation that it be investigated, that's when an investigation is put into place and they do a report that then comes back to the director of the Training Center and then the director makes a decision on whether there is a basis for decertification. And if the answer to that is yes, there is procedure that starts. PSAC is never involved with it because the PSAC becomes the hearing body. So it really comes to the director of the Training Center and they make a decision as to whether a petition to decertify ought to be filed. But that investigation normally takes place I believe at that point.

BRUNING: Your point is that they have done what they can do to file. If they had new evidence ...it starts with a complaint.

WATSON: The procedural question that I have is when it comes to Mike (Behm) he makes a recommendation it isn't pursued any further, does it ever come to the director of the Training Center?

BARNICA: If it is turned down by the Executive Director, I don't think so.

WATSON: I don't think so either, I think there has to be something affirmatively that comes from the Executive Director to send it on for investigation. Not that he is making a decision as to whether there is a decertification or not. But is there a basis to send it on to the Training Center.

BEHM: May I make a point of clarification for the people that are in observation here. My determination is not to whether or not a criminal charge is to be filed on anything. My recommendation solely deals if the officer involved should be decertified as a police officer, not if it is a criminal investigation. That's not my position to say that.

LACEY: I think the mistake that was made here was made here at the very beginning. I don't know what the situation is as far as one agency investigating another agency when an officer is involved in Buffalo County but here in Lancaster County, if we had a situation develop like this, say in the sheriff's office, then I'm sure that Terry Wagner would have LPD or the

State Patrol or some other agency investigate on the criminal charges. So I can see where the mother here and the officer from the police department might be highly suspicious, and I think the evidence is that they were suspicious, of whether or not the Kearney administration in the police department could conduct an adequate investigation in a fair manner. I think what they did once it came to light, some time after the statute of limitations on misdemeanors ran, that they did what they could.

But the state of the ... and this is nothing to say against Mike (Behm) or anything like that, I think the state of the record here doesn't serve the complainants in this situation very well nor do I think that it serves the officer very well. Because it seems to be an incomplete record. No matter which way we go, whether we uphold Mike, it might be pursued, if it got to an appellate court, the appellate court might very well say there is no record here. What about all this stuff that's in the vaults. What about the lady who works for child protective services that it was alleged that she couldn't come to the Crime Commission hearing because they heard that she was going to testify. There are all these open questions. I don't think Mike saw the entire record.

I guess what I'm saying is maybe we should take a minute and take a breath and try to correct the situation. And try and serve both in the interest of justice and the legitimate complaint of the mom and the police officer as well. And my suggestion would be to defer any action today on Mike's recommendation not to pursue this according to the rules. My, I think possibly, now I don't know this for sure because I don't have the statute book here and I ought to know it, but I think there might be a

possibility that there could be a felony child abuse which has a 3 year statute of limitations. But I don't know exactly when this happened but I don't think 3 years has gone by yet.

WHITE: Gary, that's why I was asking about the statute of limitations. Are we, are we.... do we have any kind of grounds so we can do.

LACEY: I think we ought to refer this to the State Patrol for an investigation as to whether there are any criminal activity and I don't know if your deputy had any further investigation done. And then once that's done, we can have Mike take a look at it and then make a further recommendation.

BRUNING: November, 2002 - the statute runs in 16 days.

SESNA: Would it be at the time of the report when I made it to you?

LACEY: No, it's the time...forget that.

ARNOLD: I think even from the evidence we heard today, we take without the other side, I don't see anything that shows me that it would rise to a felony because I think with a felony it has to intentionally injure. I'm not sure that was the intent to injure. It may have been the result.

The problem we have here with the decertification or criminal intent, now we have Kearney Police Department on record as saying this follows their force continuum. And he acted within that. I don't think this rises ... that this will get him to decertify. Now do I think that we should look into it a little further, I think maybe we should. But I think what we have here, if anything, is a civil suit not..because I don't think you are going to find that at the most there would be with the Kearney Police saying this follows their force continuum, use of force.

SESNA: If he did, he did not fill out the form.

ARNOLD: The problem you have there, in order for it to be an assault, he has to do it outside of the purview of his being a police officer. In order to have a criminal felony child abuse, he has to do it intentionally which it would have to have fallen outside the ... but I do think there's...I'd like to be your attorney from what we heard today. There's always two sides to everything and you have a jury or whatever but ahh.....

LACEY: But I don't think we've heard both sides.

ARNOLD: Right

SESNA: But again .....

BRUNING: Don't, please, you've got to let the Commission. .. I appreciate your responses but you had your shot.

JACOBS: This Commission has neither the authority nor the expertise to determine whether a felony was committed and at this point in time, there may not be time for anyone to do that. I remain convinced that it probably doesn't matter for purposes of decertification. Correct me if I'm wrong, isn't our job today to determine whether the investigation into this should proceed or whether this matter should be dropped.

BRUNING: Yes, I think that's....

JACOBS: If that is our job today, I will go on record and will vote certainly to say that this matter should proceed with further investigation with respect to decertification.

BRUNING: There was a motion and a second on the floor to affirm the executive



director's decision. If it affirmed, effectively the matter is dropped. If it is not affirmed, we will entertain a motion to move forward. A vote for the motion affirms the executive director's decision and the matter is effectively dropped knowing that even if the State Patrol investigation was requested today, knowing the statute of limitations runs in 16 days, there's just not time to gather any information, its not worthwhile to pursue that course of action. It was a good thought but I don't know how to get it done that fast in reality.

So we understand what the motion is for. If the motion does not carry, then the next motion could be to refer to PSAC for further investigation. You should know, even if PSAC looks at it, it may not be the result that you desire which is to start his decertification. It just means there will be further information gathered. Are we all clear where we're at. Anybody want to add anything?

HOUSTON: If PSAC looks at it, what would they do if they decide to do an inquiry. Do they have open hearing or is this something ....(not audible).

WATSON: It doesn't come to PSAC , it comes to the director of the Training Center . The director of the Training Center conducts the investigation and makes a decision whether or not there is a basis for decertification of a law enforcement officer. Then there is a formal petition that is filed to decertify the officer and hearing then is set to hear that petition that is filed to decertify. PSAC doesn't become involved with it, they are the hearing board if the executive director makes a decision that there is a basis for decertification. Again, it has, be aware, it's the decertification, it is not an internal affairs decision like what is being done inside of a police department. It's an issue of whether or not there is a basis for decertifying an officer and that decertification process is really separate apart from internal affairs that each department has to deal with.

BRUEGGEMANN: Do I need to rescind my motion? At the time the motion was made it was based on evidence that was received at hand?

LACEY: I call for the question.

BRUNING: At this point, the question has been called. I think we are ready to vote. Please call the roll.

*Motion*

*Voting in favor of the motion made by Brueggemann and seconded by White to affirm the Executive Director's decision to not pursue the revocation of Douglas A. McCarty's law enforcement certification #LR-038-05: no affirmative votes. Voting against the motion: Arnold, Brueggemann, Ford, Houston, Jacobs, Lacey, Leseberg, Pirsch, Riskowski and White. Watson was recused and abstained from voting. The motion did not carry.*

*Motion*

*A motion was made by Ford and seconded by Houston to have the Executive Director forward the revocation request for case #LR-038-05, Douglas A. McCarty to the Director of the Training Center for further investigation. Voting in favor of the motion: Arnold, Brueggemann, Ford, Houston, Jacobs, Lacey, Leseberg, Pirsch, Riskowski, and White. Watson was recused and abstained from voting. Motion carried.*

Bruning and Riskowski left the meeting at 11:00 a.m.

Bruning asked William White to serve as chair for the remainder of the meeting.

### **Award of \$73,821 Increased Funding from 2004 Federal Project Safe Neighborhood Grant Program**

The Commission next considered 2 requests for 2004 Project Safe Neighborhood grant funds. Nancy Steeves presented the funding recommendations for these two grants noting that the awards were previously approved under 2005 monies. The requests today will place the award under the 2004 money and will increase the award amounts by \$65,928 to grant #04-SN-8913, City of Omaha and \$ 7,893 to grant #04-SN-8915, City of Lincoln.

*Motion*

*A motion was made by Brueggemann and seconded by Ford to increase the award amount to grant #04-SN-8913, City of Omaha by \$65,928 (total award would be \$251,986) and to increase the award amount to grant #04-SN-8915, City of Lincoln by \$7,893 (total award would be \$52,915). Voting in favor of the motion: Arnold, Brueggemann, Ford, Houston, Jacobs, Lacey, Leseberg, Pirsch, Watson, and White. Motion carried unanimously.*

### **Award of 2005 County Juvenile Services Aid (LB 640) to Holt County**

Nancy Steeves noted at the last Commission meeting awards of 2005 County Juvenile Services Aid funds were made and that funds remained available for award. The Commission has since received a request for \$11,729 by Holt County Juvenile Services. Staff continues to encourage county participation in the fund.

***Motion***

***A motion was made by Watson and seconded by Arnold to award \$ 11,729 in 2005 County Juvenile Services Aid funds to grant #05-CA-543, Holt County Juvenile Services Plan. Voting in favor of the motion: Arnold, Brueggemann, Ford, Houston, Jacobs, Lacey, Leseberg, Pirsch, Watson, and White. Motion carried unanimously.***

**Approval of Membership of Stop Violence Against Women Act Advisory Group**

Jennifer Kirkpatrick asked the Commission to approve membership changes to the Stop Violence Against Women Act Advisory Group. She recommended that Ellen Brokofsky, State Probation Administrator, be appointed to replace Ed Birkel and that Paulette Merrell, Assistant Attorney General, be appointed to replace Marie Clarke. In addition she requested that Debora Brownyard of the Court Administrators Office be appointed to the Advisory Group.

***Motion***

***A motion was made by Houston and seconded by Leseberg to approve the membership listing of the Stop Violence Against Women Act Advisory Group as presented with the addition of Ellen Brokofsky, Paulette Merrell and Debora Brownyard. Voting in favor of the motion: Arnold, Brueggemann, Ford, Houston, Jacobs, Lacey, Leseberg, Pirsch, Watson, and White. Motion carried unanimously.***

**VI. OTHER BUSINESS**

The last item on the agenda was a report by Nancy Steeves on the Task Force Survey being conducted by the University of NE-Omaha which was funded through a 2005 Byrne Justice Assistance Block grant. The survey is conducted online by investigators, chiefs, sheriffs and county attorneys for the purpose of ascertaining how they view the task force operations. The goal is to determine if there is a better way to accomplish the task forces' goals with less money. All responses are confidential. Hank Robinson is overseeing the survey and hopes to be able to report to the Commission at its January, 2006 meeting.

## **ADJOURNMENT**

The next scheduled meeting of the Commission will be **Friday, January 27, 2006, at 9:30 a.m. , at the NE State Office Building, Lincoln.**

There being no further business, this meeting adjourned at 11:10 a.m.

Respectfully submitted,

Barbara McCreight